

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

UWE PICKERING,

Plaintiff,

v.

STELLAR RECOVERY, INC.,

Defendant.

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Case No.:

COMPLAINT AND DEMAND FOR JURY
TRIAL

(Unlawful Debt Collection Practices)

COMPLAINT

UWE PICKERING (“Plaintiff”), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against STELLAR RECOVERY, INC. (“Defendant”):

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant’s violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter “FDCPA”), and the Texas Fair Debt Collection Practices Act, which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. §1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States, and 28 U.S.C. § 1367 which grants this court supplemental jurisdiction over the state claims contained therein.

1 14. Frustrated by the repeated calls, Plaintiff told Defendant to stop calling.

2 15. However, Defendant continued to call.

3 16. Once Defendant was told the calls were unwanted and to stop, there was no
4 lawful purpose to making further calls, nor was there any good faith reason to place calls.

5 17. Defendant's actions as described herein were taken with the intent to harass,
6 upset, and coerce payment from Plaintiff.

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9 **COUNT I**
10 **DEFENDANT VIOLATED § 1692d OF THE**
11 **FAIR DEBT COLLECTION PRACTICES ACT**

12 18. Section 1692d of the FDCPA prohibits debt collectors from engaging in any
13 conduct the natural consequence of which is to harass, oppress or abuse any person in connection
14 with the collection of a debt.

15 19. Defendant violated §1692d of the FDCPA when it harassed the Plaintiff by calling
16 the Plaintiff continuously and repeatedly on a daily, and when it engaged in other harassing and
17 oppressive conduct.

18 **COUNT II**
19 **DEFENDANT VIOLATED § 1692d(5) OF THE**
20 **FAIR DEBT COLLECTION PRACTICES ACT**

21 20. Section 1692d(5) of the FDCPA prohibits debt collectors from causing a
22 telephone to ring or engaging any person in telephone conversation repeatedly or continuously
23 with the intent to annoy, abuse or harass any person at the called number.

24 21. Defendant violated § 1692d(5) of the FDCPA when it caused Plaintiff's
25 telephone to ring repeatedly and continuously, on a daily basis, and often more than once a day,
with the intent to harass or annoy Plaintiff.

COUNT III
DEFENDANT VIOLATED § 1692f OF THE
FAIR DEBT COLLECTION PRACTICES ACT

22. Section 1692f of the FDCPA prohibits debt collectors from using any unfair or unconscionable means to collect or attempt to collect any debt.

23. Defendant violated § 1692f of the FDCPA when it called Plaintiff on a repetitive and continuous basis, and when it used other unfair or unconscionable means in its attempt to collect any debt.

COUNT IV
DEFENDANT VIOLATED THE § 392.302(4) OF THE
TEXAS FAIR DEBT COLLECTION PRACTICES ACT

24. Section 392.302(4) of the Texas FDCPA prohibits debt collectors from causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.

25. Defendant violated § 392.302(4) of the Texas FDCPA when it caused Plaintiff's telephone to ring repeatedly and continuously with the intent to harass or annoy Plaintiff.

COUNT V
DEFENDANT VIOLATED THE § 392.302(4) OF THE
TEXAS FAIR DEBT COLLECTION PRACTICES ACT

26. Section 392.302(4) of the Texas FDCPA prohibits debt collectors from causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.

27. Defendant violated § 392.302(4) of the Texas FDCPA when it kept repeatedly or

1 continuously causing Plaintiff's telephone to ring, as aforesaid, with the intent to harass the
2 Plaintiff.

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4 **COUNT IX**
5 **DEFENDANT VIOLATED § 392.303(a)(2) OF THE**
6 **TEXAS FAIR DEBT COLLECTION PRACTICES ACT**

7 28. Section 392.303(a)(2) of the Texas FDCPA prohibits debt collectors from using
8 unfair or unconscionable means to collect a debt.

9 29. Defendant violated § 392.303(a)(2) when it called Plaintiff repeatedly and
10 continuously, when it called Plaintiff on a daily basis, and when it engaged in other unfair or
11 unconscionable means to collect a debt.

12
13 WHEREFORE, Plaintiff, UWE PICKERING, respectfully prays for a judgment as
14 follows:

- 15 a. All actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
16 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
17 15 U.S.C. § 1692k(a)(2)(A) and statutory damages of \$100.00 for the
18 violation of the Tex. Fin. Code Ann. § 392 *et. seq.* pursuant to Tex. Fin. Code
19 Ann. § 392.403(e);
20 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
21 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3) and Tex. Fin.
22 Code Ann. § 392.403(b); and
23 d. Any other relief deemed appropriate by this Honorable Court.
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, UWE PICKERING, demands a jury trial in this case.

DATED: September 16, 2014

KIMMEL & SILVERMAN, P.C.

By: /s/ Amy L. Bennecoff

Amy L. Bennecoff

Kimmel & Silverman, P.C.

30 E. Butler Avenue

Ambler, PA 19002

Tel: 215-540-8888

Fax: 215-540-8817

Email: abennecoff@creditlaw.com